REMARKS

In the Office Action, the Examiner rejected claims 22-42 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner stated that "[f]or a process claim to pass muster, the recited process must somehow apply, involve, use or advance the technological arts, and goes on to conclude that "the claims do not recite any structure or functionality to suggest that a computer performs the recited claims." The Examiner then advised Applicants to imbed a computer into the body of the claims. Applicants traverse the Examiner's rejection under § 101 for the following reasons.

First of all, claims 22-24 are not process claims as suggested by the Examiner. Rather, the claims are apparatus claims directed to an investment vehicle. Second, Applicants are unaware of anything either in the patent statute or the relevant case law that requires recitation of a computer in claims such as those presented by Applicants in order for the claims to be directed to statutory subject matter. Nevertheless, in an effort to expedite prosecution of the instant application, Applicants have agreed to amend the claims to include reference to a computer system as suggested by the Examiner. In view of these amendments, Applicants request that the Examiner withdraw the rejection under § 101. It should be noted that Applicants have further amended claim 22 to improve its form. Such additional amendments were not made in response to nor are they related in any way to any rejections issued by the Examiner.

The Examiner further rejected claims 22-42 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,101,353 issued to Lupien et al. ("Lupien et al."). Applicants traverse the Examiner's rejection under § 102 for the following reasons.

Concerning independent claim 22, that claim recites that interests in a security which are bought or sold can "correspond to a selected fractionalized market unit of the security." The examiner cites to various portions of Lupien et al. as teaching this feature of the claimed invention. Applicants have reviewed Lupien et al. in great detail, especially those portions noted by the Examiner, and find no reference, whatsoever, to the concept of buying/selling interests corresponding to a selected fractionalized market unit of a security as claimed. To the contrary, Lupien et al. only provides for buying/selling whole interests in securities (e.g., whole shares of stocks). Indeed, if the Examiner looks at Figures 2-6 and the corresponding text of Lupien et al., he will notice that only whole numbers of shares of stocks can be purchased or sold with the Lupien et al. system.

Independent claim 22 further recites that each of the orders can include a plurality of limit requests. The examiner again cites to various (indeed the same) portions of Lupien et al. as teaching this feature of the claimed invention, and Applicants again find no such teaching in those portions or any other portions of Lupien et al. To the contrary, Lupien et al., which defines an "order" as an instruction to buy or sell a single security at a certain price or better (see, e.g., col. 12, lns. 58-60), only teaches that an order can include but a single limit request. Once again, if the Examiner looks at Figures 2-6 and the corresponding text of Lupien et al, he will notice that each order is associated with but a single limit request (in those cases, indicated by a single limit price).

Concerning dependent claim 23, that claim recites that at least one of the plurality of limit requests is a request to buy or sell interests in more than one of the plurality of securities upon the happening of a specific even or condition. Once again, the examiner cites to the same portions of Lupien et al. as teaching this feature of the

claimed invention, and Applicants once again find no such teaching in any portion of the reference. To the contrary, according to Lupien et al., an event or condition associated with a limit request can only form the basis for a request to buy or sell interests in a single security (see, e.g., Figures 2-6 of Lupien, which show that each limit price is associated with but a single stock).

Concerning the remained of dependent claims 24-42, Applicants are unable to confirm the examiner's view that the limitations of all of those claims are found in Lupien et al. For example, neither the allocation factors of claims 27 or 34 nor the commission structures of claims 28-31 are taught by Lupien et al. Further neither the dynamically re-configurable building blocks of claim 32 or 38 nor the portfolio structures of claims 33, 35, 36 or 37 are taught by Lupien et al.

Finally, Applicants feel compelled to express, on the record, their frustration with regard to the handling of the present application. First, Applicants question why it has taken more than five years for the Examiner to issue a rejection under 35 U.S.C. § 101 despite the fact that Applicants have never presented claims that recite a computer system. Why the Examiner has decided at this point in time to raise such a rejection is perplexing to say the least. Second, when issuing the rejection under 35 U.S.C. 102, for each of the claims rejected, the Examiner cites to the exact same language of Lupien et al. Moreover, the Examiner fails to cite with any specificity those portions of Lupien et al. that allegedly provide support for the Examiner's contentions, nor does the Examiner provide any level of detail concerning his interpretation of Lupien et al. or how such an interpretation may be relevant to the pending claims. Instead, the Examiner merely cites to large sections (in some cases, entire columns!) of Lupien et al. to support his position without giving Applicants any guidance whatsoever as to the true basis for the rejection. If the Examiner is going to

continue to apply Lupien et al. (or any other reference for that matter) against the pending claims, Applicants request that the Examiner provide a more thorough explanation of his rational.

In view of the foregoing, Applicants believe that the present application is now in condition for allowance and respectfully request an early and favorable action.

Respectfully submitted,

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